

**Florida's Request To Assume Administration of a Clean Water Act Section 404 Program  
(85 FR 57853, September 16, 2020) EPA-HQ-OW-2018-0640**

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**Code 13 Public Participation**

**EPA Provided Adequate Public Notice and Opportunity to Provide Feedback**

Commenters (0223, 0429-Ed Thomas) contended that the public was given enough time to appropriately respond to the feedback. These commenters maintained that EPA gave enough public notice regarding the hearings and that EPA allowed for extensive public comment and engagement during the process.

**EPA Did Not Provide Adequate Public Notice**

Commenters (0430-Faith Bickner, 0430-Sarah Younger) said that the public was not given enough notice that hearings would be taking place. These commenters stated that there was not enough information available to the public and that it is reasonable to believe that many people would miss the hearings due to a lack of publicity.

**More Time Is Needed for the Hearing Process**

Numerous commenters stated that more time is needed so that the public can meaningfully participate in and respond to the hearings, although did not specify COVID-19 as one of the reasons (0177, 0221-N. Fried, 0406, 0427, 0430-Kent Wimmer, 0430-Rachel Uhland, 0430-Kayla Barreto, 0430-Jessica Dennis, 0430-Chris Costello).

Commenter (0406) thought that increased public awareness would lead to better environmental protections because more people would have the opportunity to comment on the proposal. Commenter (0430-Jessica Dennis) stated that there has been significant public opposition to Florida assuming Section 404 authority, and that—because of this opposition—it would be inappropriate to move forward with such limited public feedback.

Commenters (0430-Rachel Uhland, 0430-Kayla Barretto) said that they got very little notice about the hearings, and only found out about them last minute. Commenter (0430-Rachel Uhland) specified that such short notice made it impossible for the public to give complete feedback on the proposal.

**Virtual Webinars Are No Substitute for Public Hearings**

Commenters were generally against holding only virtual public hearings, saying that virtual public hearings are not an appropriate substitute for in-person hearings, and that hearings should be postponed until they can either fully or partially be held in person (0066, 0081, 0429-Kelly Cox, 0104, 0150, 0456, 0513, 0136, 0141, 0220, 0225, 0339, 0369, 0430-Chris Costello).

Multiple commenters (approximately 125) submitted a form letter (form letter 0513) stating that the rulemaking process has not been inclusive for public participation because webinars and phone conferences are inadequate compared to in-person hearings.

Commenters (0429-Kelly Cox, 0104, 0150, 0456, 0513, 0136) maintained that it was inappropriate to continue with the hearings during a public health crisis. Commenters (0339, 0369) were worried that those without access to technology would be unable to participate in hearings if they were conducted entirely online.

Commenters (0141, 0220, 0225, 0339) specifically requested that the USEPA hold in-person hearings to supplement the virtual webinars once in-person hearings could be done safely.

Commenter (0066) thought that the state of Florida assuming CWA Section 404 authority would only place unnecessary stress on the state at a time when resources should be going toward the COVID-19 pandemic. Commenters (0141, 0220, 0225, 0339) thought that the state's assumption of Section 404 authority could have long-term consequences for the public, and that hearings must be held in person to ensure that the public has an opportunity to discuss these consequences.

### **Public Hearings Need to Be Held**

Commenters (0066, 0120) believed that, at a minimum, public hearings should be postponed until the public can comment in person. Commenters (0120) was open to allowing virtual comments, but believed that public comments are still of the utmost importance.

### **Public Participation Should Be Preserved**

Commenters (0430-Chris Pettit, 0430-Faith Bickner) believed that high levels of public participation need to be preserved in order to move forward with the proposal. Commenter (0430-Faith Bickner) specified that moving forward with such low public participation would be unjust.

### **More Time Is Needed Due to COVID-19**

Commenters believed that hearings should not take place until the COVID-19 pandemic is more under control. Commenters (0066, 0367, 0425, 0486, 0430, 0430-Alison Kelly) specified that the public could not meaningfully contribute during the height of the pandemic because issues of higher priority, such as the health and wellness of themselves and their families, were taking up too much of their focus.

Many commenters (approximately 125) (form letter 0513) agreed that moving forward with rulemaking during this time of international crisis due to COVID-19 is inappropriate.

Commenter (0425) suggested that more advertising and transparency was necessary if hearings were to be held during the COVID-19 pandemic. Commenter (0421) stated that the public could

meaningfully participate during the COVID-19 pandemic, but that more time was needed in order to do so.

Commenters (0425, 0486, 0430-Alison Kelly) were worried that holding virtual hearings alone was exclusionary of those without the privilege of internet access. These commenters contended that FDEP should wait until the pandemic is over to hold hearings.

### **The Public Needs More Access to the State of Florida's Application**

Commenters emphasized that the public has not been given full access to the state of Florida's application materials, and that the public should be allowed to see the full application. More specifically, commenters (0075, 0075, 0346, 0429-Lindsey Dubin) said that EPA should give the public a minimum of 45 days to comment on the state's application, including on the Biological Opinion and the Incidental Take Statement. The commenter (0429-Lindsey Dubin) also said that denying the public meaningful comment on the state's complete application was in violation of Clean Water Act regulations, and that EPA needs to provide more information on how the application will impact the state's wildlife.

Commenter (0386) said that FDEP limited the public comment period to the very time when the public was most struggling with the COVID-19 pandemic. The commenter said that this action, combined with the incomplete application materials provided to the public, further eroded the public's trust in FDEP.

One additional commenter (0524) believed that Florida's assumption CWA Section 404 authority would not be well organized, and was worried that future project applications would be similarly hidden from public view.